

REMARKS

Favorable reconsideration of this application, in light of the preceding amendments and following remarks, is respectfully requested.

Claims 1-3, 5-9, 11 and 13-18 are pending in this application. Claim 10 having been cancelled by the present amendment without prejudice to the subject matter contained therein.

Examiner Interview

Initially, Applicants wish to thank the Examiner for the courtesies extended to Applicants' representative during the telephonic interview of October 29, 2010. The parties discussed the 35 U.S.C. § 102(e) rejection and more specifically the Examiners response to Applicant's arguments. In discussing the § 102(e) rejection, the parties discussed the Flick reference. No agreement was reached.

Foreign Priority

Applicants note with appreciation the Examiner's acknowledgement that certified copies of all priority documents have been received by the U.S.P.T.O.

Drawings

Applicants also respectfully note that the present action indicates that the drawings have been accepted by the Examiner.

Rejections under 35 U.S.C. § 112

Claim 10 stands rejected under 35 U.S.C. § 112, first paragraph as allegedly containing subject matter which was not described in the specification. Although Applicants do not necessarily agree with the Examiner, Applicants have cancelled claim 10 rendering the rejection moot. The Applicants, therefore, respectfully request withdrawal of the rejection under 35 U.S.C. § 112.

Rejections under 35 U.S.C. § 102

Claims 1-18 stand rejected under 35 U.S.C. § 102(e) as being anticipated by US Patent Publication 2005/0190080 to Flick ("Flick"). Applicants respectfully traverse this rejection for the reasons detailed below.

The Examiner asserts Flick teaches "adapting the communication based on said parameters, the adapting includes shifting between a time-controlled communication and a distance-controlled communication," as recited in amended claim 1. Applicants respectfully disagree.

The Examiner relies on paragraphs [0222]-[0237] of Flick in rejecting the aforementioned feature. Applicants respectfully disagree. At most, these paragraphs teach varying a **rate of transmission indicating a time-controlled communication** and that a tracking device may wait until a vehicle's position has changed if no acknowledgement has been received after sending an alert indication.

For example, paragraphs [0222]-[0223] of Flick describe varying the rate of transmission. In a first variation, the **rate of transmission** is reduced in an

area where a user has a lesser interest in quickly updated information. In a second variation, the **rate of transmission** is increased if the vehicle's speed is above a preset speed. Clearly Flick describes varying the rate of transmission which indicates a time controlled communication, **not** "shifting between a time-controlled communication and a distance-controlled communication," as required by claim 1.

As a second example, paragraph [0224] of Flick teaches that the tracking device sends an alert indication a set number of times without receiving an acknowledgement. The tracking device then **waits until the vehicle changes position** before sending another alert. Flick teaches that this process conserves power while a vehicle is obstructed by not sending alerts when the vehicle is unreachable. Clearly, Flick describes stopping alert transmissions when a vehicle's communication is obstructed, **not** "adapting the communication based on said parameters, the adapting includes shifting between a time-controlled communication and a distance-controlled communication," as required by claim 1.

Paragraphs [0226]-[0237] of Flick describe using codes on a control channel to turn a feature on or off. For example, a feature may be deactivating a receiver due to a non-paying customer. Paragraphs [0226]-[0237] of Flick do not teach the aforementioned feature of claim 1.

Because Flick does not teach or suggest each and every feature of claim 1, Flick does not anticipate or render claim 1 obvious. Claims 2-3, 5-11 and 13-18 are patentable at least by virtue of their dependency from claim 1.

The Applicants, therefore, respectfully request reconsideration and withdrawal of the rejection to claims 1-3, 5-9, 11 and 13-18 under 35 U.S.C. § 102(e). Claim 10 having been cancelled by the present amendment.

CONCLUSION

In view of the above remarks and amendments, the Applicants respectfully submit that each of the pending objections and rejections has been addressed and overcome, placing the present application in condition for allowance. A notice to that effect is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to contact the undersigned.

Pursuant to 37 C.F.R. §§ 1.17 and 1.136(a), Applicant(s) hereby petition(s) for a two (2) month extension of time for filing a reply to the outstanding Office Action and submit the required \$490.00 extension fee herewith. Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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By



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